

**STATE OF INDIANA
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

**IN THE MATTER OF
THE PERMIT OF**

**ARNOLD J. GILBERT
D/b/a LALOS TACOS III BAR & GRILL
OXFORD, INDIANA 47971**

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PERMIT NO. RR04-05275

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

Arnold J. Gilbert, d/b/a Lalos Tacos III Bar & Grill, located at 126 E. McConnell Street, Oxford, Indiana 47971, permit number RR04-05275 (“Permittee”), holds a type 210 Alcohol and Tobacco Commission (“Commission” or “ATC”) permit. The renewal application was filed and subsequently assigned for investigation and review by the Benton County Local Alcoholic Beverage Board (“Local Board”). On May 25, 2005, the Local Board heard the application for renewal of permit request and on that same day, voted 4-0 to deny renewal of said permit. The Commission adopted the Local Board’s recommendation on June 14, 2005.

Permittee filed a timely Notice of Appeal and the matter was assigned to Commission Hearing Judge U-Jung Choe (“Hearing Judge”). The matter was set for hearing on February 10, 2006, and at that time, witnesses were sworn, evidence was heard, and matters were taken under advisement. The Hearing Judge, having reviewed the tape-recorded transcript, the evidence submitted to the Commission during the appeal hearing and the contents of the entire Commission file, now tenders her Proposed Findings of Fact and Conclusions of Law with the recommendation that they be adopted and approved by the members of the Commission.

II. FINDINGS OF FACT

1. Permittee, Arnold J. Gilbert, d/b/a Lalos Tacos III Bar & Grill, located at 126 E.

McConnell Street, Oxford, Indiana 47971, permit number RR04-05275, is the holder of a type 210 ATC permit. (ATC File)

2. Permittee filed with the Commission its application for renewal of permit at the above location that was subsequently referred to the Local Board. (ATC File)

3. On May 25, 2005, the Local Board recommended denial of Permittee's application for renewal of permit by 4-0 vote and found by substantial evidence that it should not be entitled to the ATC permit. (ATC File; Local Board Hearing)

4. The permit was first issued to the Permittee on September 6, 2000. At least since 2001, Permittee had not operated nor had any ownership interest in the permit premises. (ATC Hearing; ATC File).

5. Actual owner and operator of the permit premises is Mario Mirramontes ("Mirramontes"). (ATC Hearing).

6. On or about March 8, 2005, Mirramontes filed with the Commission an Application for Alcoholic Beverage Permit Schedule – Manager's Questionnaire and had been operating the permit premises as a "manager" since that date. (ATC Hearing; ATC File).

7. Permittee applied for the ATC alcoholic beverage permit for the sole benefit of Mirramontes. (ATC Hearing).

III. CONCLUSIONS OF LAW

8. The Commission has jurisdiction over this matter pursuant to Ind. Code §§ 7.1-1-2-2 and -2-3-9.

9. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).

10. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the

Commission including a public hearing, and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

11. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

12. Permittee is disqualified from holding an ATC permit since he does not own the permit premises or has a bona fide lease on the premises for the full period for which the permit is to be issued. Ind. Code § 7.1-3-4-2(3).

13. Permittee falsified records for permit application. Ind. Code § 7.1-5-6-4.

14. The Commission is charged to uphold local board action on a permit application unless upon review that action runs contrary to the well-established provisions of Indiana Code 7.1 and 905 Indiana Administrative Code.

15. The Commission shall follow the Local Board unless upon review of that recommendation it finds that to follow that recommendation would be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.

16. The Local Board's decision in denying the issuance of permit to the Applicant was not (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to a constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to,

statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; or (e) unsupported by substantial evidence. *Id.*

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the finding of the Indiana Alcohol & Tobacco Commission in denying the renewal application to the Permittee, Arnold J. Gilbert, d/b/a Lalos Tacos III Bar & Grill, located at 126 E. McConnell Street, Oxford, Indiana 47971, permit number RR04-05275, was based on substantial evidence and must be sustained. This Hearing Judge recommends to the Commission that the recommendation of the Local Board be UPHELD and that this permit be REVOKED.

DATED: _____

U-Jung Choe, Hearing Judge
Indiana Alcohol & Tobacco Commission